

Claims 1-12 are pending.

Claims 1-12 stand rejected under 35 U.S.C. 103(a) as obvious over Mullet (6,083,491) in view of Sine (5,997,890). The Examiner sees Mullet as teaching a water-in-oil emulsion comprising cetyl dimethicone copolyol, water and caprylic and capric acid triglycerides and cationic polymers, and certain oil phase constituents; but as failing to teach the per cent weights of the oil and water phases.

The Examiner then relies on Sine which, according to the Examiner, teaches water-in-oil compositions in which the hydrophilic phase comprises 1-98% of the composition. The Examiner thinks it would be obvious to combine Sine's percentages with Mullet's emulsions, and that somehow this would result in Applicants' emulsions.

Applicants have previously pointed out that Mullet does not teach anything at all about how to prepare water-in-oil emulsions which have the high water contents that Applicants achieve, that comprise the polar lipids that Applicants' emulsions have, or the low viscosities that Applicants achieve (page 6, last two lines).

Mullet is primarily concerned with introducing solid particles, which have been coated with a cationic polymer, into cosmetic preparations. Mullet only mentions water-in-oil emulsions as one of the forms his compositions can take (col. 13, lines 28-30) and specifically discloses only one water-in-oil emulsion, and that emulsion has only 68% water

(col. 21, Example K). Moreover, the emulsion of Example K does not contain any alkylmethicone copolyol or alkyldimethicone copolyols.

Applicants have also previously pointed out that Mullet has absolutely no specific teaching about any kind of emulsions; and certainly nothing that would lead to an emulsion having the same or similar components as Applicants, irrespective of amounts!

To this, the Examiner responds that Applicants main claim is directed towards a composition, not a method, and that therefore the preparation of the composition is not relevant.

The Examiner overlooks the legal requirement that to render Applicants' composition obvious, the prior art references must enable those skilled in the art to prepare it. In the absence of such enablement, the prior art references do not place the allegedly disclosed matter in the possession of the public, and cannot render Applicants' claims obvious (see Akzo N.V. v. U.S. International Trade Commission, CAFC 1986, 1 USPQ2d 1241).

Nowhere in the references cited by the Examiner can there be found anything that would enable those skilled in the art to produce a water-in-oil emulsion having an aqueous phase content of more than 75% by weight, and a viscosity at 25° C that is less than 5000 mPa•s. In the absence of such enablement, the references neither anticipate the present invention, nor render it obvious.

Although Applicants pointed out to the Examiner that the highest water content specifically disclosed by Mullel was the 68% disclosed in Example K, the Examiner disputes this. According to the Examiner, Example K shows a total weight of 132 grams which, when divided into the water content indicated, discloses a water content of 77%.

The Examiner misunderstands what the Example discloses, and has specifically misunderstood the amount of water indicated. If the Examiner will take another look at Example K, the Examiner will see that the amount of water is indicated as "water qs". The expression "qs" means "quantum sufficit" (see the attached copy of page 1159 of Webster's New World Dictionary, Second College Edition). In the context of this Example, the amount of water is actually "the amount sufficient to reach 100g". Thus, the amount of water is the amount which, when added to the 32 grams of other components listed, will add up to a total of 100 grams. Thus, the amount of water is actually 68 grams, which is 68% as Applicants have previously indicated.

The Sine reference, on the other hand, discloses nothing that could be combined with Mullel to overcome the deficiencies discussed above. Sine is concerned with the addition of titanium dioxide to formulations for covering skin imperfections. Sine mentions both oil-in-water and water-in-oil emulsions as preferred carriers and says that oil-in-water emulsions typically comprise...about 1% to about 98% of the continuous hydrophilic phase; and that water-in-oil emulsions typically comprise from about 1% to 98% of the dispersed hydrophilic phase.

This reference does not actually teach anything at all about water-in-oil emulsions, especially water-in-oil emulsions having high water contents, but simply refers to water-in-oil emulsions as typically having from about 1% to about 98% of the dispersed hydrophilic phase. There are **no** examples of **any** water-in-oil emulsions given.

Moreover, Sine discloses nothing about viscosities, other than generally indicating that preferred compositions have apparent viscosity of from 5,000 to 20,000 centipoises. In this regard, Sine makes no distinction between water-in-oil and oil-in-water emulsions, and therefore could not possibly point any person skilled in the direction of a water-in-oil emulsion having both a very high water content and a low viscosity. Those skilled in the art would never expect to find a water-in-oil emulsion having an aqueous phase content of more than 75% in combination with a viscosity below 5000 mPa•s. Such persons would expect that a high water content would necessarily be accompanied by a high viscosity, and would be completely surprised to learn that Applicants have been able to produce a water-in-oil emulsion that combines such a high water content with such a low viscosity.

Applicants' water-in-oil emulsions are neither taught nor suggested by Mullet or Sine, whether taken individually or in any combination. The rejection of claims 1-12 under 35 U.S.C. 103(a) as obvious over Mullet (6,083,491) in view of Sine (5,997,890) should accordingly now be withdrawn.

In view of the present amendments and remarks it is believed that claims 1-12 are now in condition for allowance. Reconsideration of said claims by the Examiner is

respectfully requested and the allowance thereof is courteously solicited. Should the Examiner not deem the present amendment and remarks to place the instant claims in condition for allowance, it is respectfully requested that this Amendment Under Rule 116 be entered for the purpose of placing the prosecution record in better condition for appeal.

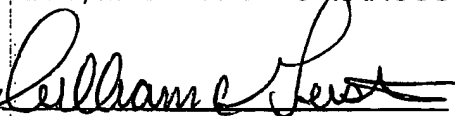
CONDITIONAL PETITION FOR EXTENSION OF TIME

If any extension of time for this amendment is required, applicants request that this be considered a petition therefore. Please charge the required petition fee to Deposit Account No. 14-1263.

ADDITIONAL FEE

Please charge any insufficiency of fee or credit any excess to Deposit Account No. 14-1263.

Respectfully submitted  
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I hereby certify that this correspondence is being transmitted via facsimile addressed to BOX AF, Assistant Commissioner for Patents, Washington, D.C. 20231 on February 26, 2002



Date February 26, 2002

**MARKED-UP COPIES OF AMENDED CLAIMS  
SHOWING CHANGES RELATIVE TO PREVIOUS VERSIONS**

Claim 1 (twice amended). Water-in-oil emulsions

- (a) with a content of water and optionally water-soluble substances totalling at least 75% by weight and with a content of lipids, emulsifiers and lipophilic constituents totalling at most 25%, based in each case on the total weight of the preparations,
- (b) whose oil phase is selected from the group consisting of lipids and lipid mixtures, where the total polarity of the lipid phase is between 20 and 30 mN/m,
- (c) comprising at least one interface-active substance, selected from the group consisting of alkylmethicone copolyols[,] , alkyldimethicone copolyols, and mixtures thereof
- (d) optionally comprising one or more cationic polymers

**and having a viscosity at 25°C which is less than 5000 mPa•s.**